48A C.J.S. Judges § 215

Corpus Juris Secundum | August 2023 Update

Judges
Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VIII. Liabilities

A. General Considerations

§ 215. Generally

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Judges 36

As a general rule, a judge is not liable for acts done in the exercise of a judicial function, within the limits of the judge's jurisdiction.

As a general rule, a judge is immune from civil liability for acts done in the exercise of a judicial function or capacity[1] while acting within the scope of judicial jurisdiction.[2] A judge is not liable for neglect or refusal to act.[3] Judicial immunity arose because it was in the public interest to have judges who were at liberty to exercise their independent judgment about the merits of a case without fear of being mulcted for damages should an unsatisfied litigant be able to convince another tribunal that the judge acted not only mistakenly but also with malice and corruption.[4] The purpose of the judicial immunity privilege is not to protect the few judges who may be corrupt but to encourage fearless decisionmaking by the vast majority of judges who are honest.[5]

The rationale for judicial immunity includes the important public policies of protecting the finality of judgments, discouraging inappropriate collateral attacks, and preserving judicial independence

by insulating judges from lawsuits by unsatisfied litigants.[6] Judicial immunity exists not for the protection or benefit of a malicious or corrupt judge but for the benefit of the people, in whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.[7] Thus, the common policy thread that runs through judicial, prosecutorial, and witness immunity is the need to ensure that participants in the judicial process act without fear of the threat of ruinous civil litigation when performing their respective functions.[8]

It is a judge's duty to decide all cases within the judge's jurisdiction which are brought before the judge, including controversial cases that arouse the most intense feelings in the litigants, and the judge should not have to fear that unsatisfied litigants may hound the judge with litigation charging malice or corruption.[9] Imposing such a burden on judges would contribute not to principled and fearless decisionmaking but to intimidation,[10] and a judge's errors may or should be corrected on appeal rather than by action for damages.[11]

A judge is absolutely immune from damages for actions taken in a judicial capacity unless the judge has acted in the clear absence of all jurisdiction.[12] Thus, in determining the scope of immunity from civil liability for judicial acts, a distinction must be drawn between acting in excess of general jurisdiction and acting in clear absence of all jurisdiction.[13] A judge is not liable even though the judge exceeds his or her authority or acts in excess of his or her jurisdiction[14] or even though it is a case in which the judge is called on to decide whether or not a particular case is within the judge's jurisdiction, and the judge errs in arriving at that conclusion.[15] Moreover, where a judge has full jurisdiction of the subject matter and of the parties, the judge is not liable civilly even though the judge acts erroneously, illegally, or irregularly.[16] The judge is not chargeable with costs resulting from erroneous rulings,[17] nor is the judge liable for a failure to exercise due and ordinary care.[18] However, where a judge acts in clear absence of all jurisdiction, the judge is subject to civil action for any damage resulting therefrom[19] if the facts presented have no legal value or color of legal value.[20]

The doctrine of judicial immunity is so expansive that it is overcome only when: (1) the action is nonjudicial, that is, not taken in the judge's judicial capacity, or (2) the action, although judicial in nature, is performed in the complete absence of any jurisdiction.[21] A judge's act may be viewed as "judicial," for purposes of determining applicability of judicial immunity, unless the conduct in question was purely ministerial.[22] In the context of judicial immunity, the term "jurisdiction" means judicial power to hear and determine a matter,[23] not the manner, method, or correctness of the exercise of that power.[24] "Jurisdiction" is construed broadly[25] in order to prevent the issue of judicial immunity from hinging on the determination of fine questions of jurisdiction.[26] Under

such a construction, a judge will not be held liable unless the judge acts without color of authority,[27] or judicial action is taken in the clear absence of all jurisdiction.[28] A determination of whether judicial immunity exists is a question of law.[29]

Suit for equitable relief.

It has been held that judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in his or her judicial capacity.[30] However, it has also been held that judicial immunity protects federal judges from injunctive relief[31] and that under the Federal Courts Improvement Act, the doctrine of judicial immunity bars a suit against a judge for injunctive relief unless the judge violates a declaratory decree, or declaratory relief is unavailable.[32]

CUMULATIVE SUPPLEMENT

Cases:

Judicial immunity is a long-recognized common-law doctrine shielding judges from collateral attacks challenging a judge's actions taken in her official judicial capacity. Morgan v. Board of Professional Responsibility of the Supreme Court of Tennessee, 63 F.4th 510 (6th Cir. 2023).

Judges are generally absolutely immune from civil suits for money damages. Bright v. Gallia County, Ohio, 753 F.3d 639 (6th Cir. 2014).

Judge was not entitled to judicial immunity from arrestee's state and federal claims arising from allegation that judge engaged in a non-judicial act when he had a private, after-business-hours meeting in his chambers with confidential informant and conspired to entrap her into agreeing to murder-for-hire scheme, where conspiring to entrap arrestee was not a normal judicial function, alleged meeting with informant was not centered around a case pending before the court, and meeting did not arise directly out of a visit to judge in his official capacity, since he and informant were close friends. Thomas v. State, 294 F. Supp. 3d 576 (N.D. Tex. 2018), report and recommendation adopted, 2018 WL 1254926 (N.D. Tex. 2018).

Allegations of improper motives, bad faith, or malice are not enough to overcome the absolute immunity afforded in judicial or quasi-judicial proceedings; rather, a plaintiff must demonstrate that either (1) the actions in question were not taken in the defendant's judicial or quasi-judicial capacity or (2) the defendant has acted in the complete absence of all jurisdiction. Carter v. Bowler, 211 Conn. App. 119, 271 A.3d 1080 (2022).

Judicial immunity did not preclude claim for declaratory judgment asserted by weapons carry license applicants and firearm rights organization against probate court judge in his individual capacity, where claim was for declaratory relief rather than damages, and claim asserted that judge violated statute by failing to process license applications within statutory time frame. Ga. Code Ann. § 16-11-129(d) (4). GeorgiaCarry.Org, Inc. v. Bordeaux, 352 Ga. App. 399, 834 S.E.2d 896 (2019).

Trial judge's failure to communicate with county sheriff that order of possession in mortgagee's forcible entry and detainer suit was invalid due to appellate judgment holding other trial court's foreclosure and sale orders void for lack of jurisdiction constituted judicial action, rather than administrative action, and thus mortgagors' claims against judge for wrongful eviction and other relief were precluded by doctrine of judicial immunity; trial judge could only have communicated with sheriff in a legally binding way by means of a judicial order staying or vacating previous order of possession. Bozek v. Bank of America, N.A., 2021 IL App (1st) 191978, 455 Ill. Dec. 402, 191 N.E.3d 709 (App. Ct. 1st Dist. 2021), appeal denied, 453 Ill. Dec. 245, 187 N.E.3d 698 (Ill. 2022).

Former state judge's alleged actions subsequent to the arrest of process server in judge's courtroom while attempting to serve judge with a summons did not involve judge acting in his official capacity, and thus neither judicial immunity nor quasi-judicial immunity barred server's action against judge for malicious prosecution and civil conspiracy; judge's alleged actions, which occurred after server had been removed from judge's courtroom, included replacing server's recording pen with a screwdriver, illegally hiring a district attorney pro tem to prosecute server, and obtaining perjured witness affidavits. Tex. Civ. Prac. & Rem. Code Ann. § 27.005(d). Walker v. Hartman, 516 S.W.3d 71 (Tex. App. Beaumont 2017).

[END OF SUPPLEMENT]

Footnotes

1 U.S.—Forrester v. White, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988); Hollis-Arrington v. PHH Mortg. Corp., 205 Fed. Appx. 48 (3d Cir. 2006); Sanchez v. Doyle, 254 F. Supp. 2d 266 (D. Conn. 2003).

Ga.—Earl v. Mills, 275 Ga. 503, 570 S.E.2d 282 (2002).

As to nature and scope of judicial acts and functions, see §§ 224 et seq.

2 U.S.—Chisum v. Colvin, 276 F. Supp. 2d 1 (D.D.C. 2003).

D.C.—McAllister v. District of Columbia, 653 A.2d 849 (D.C. 1995).

Tex.—B.K. v. Cox, 116 S.W.3d 351 (Tex. App. Houston 14th Dist. 2003).

3 U.S.—Littleton v. Fisher, 530 F.2d 691 (6th Cir. 1976).

Cal.—City of Santa Clara v. County of Santa Clara, 1 Cal. App. 3d 493, 81 Cal. Rptr. 643 (1st Dist. 1969).

Ky.—Schmidt v. Forehan, 549 S.W.2d 320 (Ky. Ct. App. 1977).

4 U.S.—Dennis v. Sparks, 449 U.S. 24, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980).

5 N.J.—Loigman v. Township Committee of Tp. of Middletown, 185 N.J. 566, 889 A.2d 426 (2006).

6 U.S.—Forrester v. White, 484 U.S. 219, 108 S. Ct. 538, 98 L. Ed. 2d 555 (1988).

Fla.—Kalmanson v. Lockett, 848 So. 2d 374 (Fla. 5th DCA 2003).

N.Y.—Mosher-Simons v. County of Allegany, 99 N.Y.2d 214, 753 N.Y.S.2d 444, 783 N.E.2d 509 (2002).

7 Mo.—Long v. Cross Reporting Service, Inc., 103 S.W.3d 249 (Mo. Ct. App. W.D. 2003).

8 N.J.—Loigman v. Township Committee of Tp. of Middletown, 185 N.J. 566, 889 A.2d 426 (2006).

9 U.S.—Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); Pierson v. Ray, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967).

Ohio—Newdick v. Sharp, 13 Ohio App. 2d 200, 42 Ohio Op. 2d 344, 235 N.E.2d 529 (4th Dist. Vinton County 1967).

Wis.—Abdella v. Catlin, 79 Wis. 2d 270, 255 N.W.2d 516 (1977).

10 U.S.—Pierson v. Ray, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967); Town of Hopkins, S. C. v. Cobb, 466 F. Supp. 1215 (D.S.C. 1979).

11 U.S.—Pierson v. Ray, 386 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967).

Tenn.—Harris v. Witt, 552 S.W.2d 85 (Tenn. 1977).

Wis.—Abdella v. Catlin, 79 Wis. 2d 270, 255 N.W.2d 516 (1977).

12 U.S.—Stiggle v. Tamburini, 467 F. Supp. 2d 183 (D.R.I. 2006).

13 U.S.—Penn v. U.S., 335 F.3d 786 (8th Cir. 2003).

Illustration of distinction

If a probate judge, with jurisdiction over only wills and estates, should try a criminal case, the judge would be acting in the clear absence of jurisdiction and would not be immune from liability for his or her action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, such judge would merely be acting in excess of his or her jurisdiction and would be immune.

U.S.—Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978).

14 Mo.—Long v. Cross Reporting Service, Inc., 103 S.W.3d 249 (Mo. Ct. App. W.D. 2003).

Meaning of "excess of jurisdiction"

"Excess of jurisdiction," in the context of judicial immunity, as distinguished from an entire absence of jurisdiction, means that the act, although within the judge's general power, is not authorized and therefore void because conditions which alone authorize the exercise of judicial power in the particular case are wanting, and judicial power is not lawfully invoked.

U.S.—Wade v. Bethesda Hospital, 337 F. Supp. 671, 61 Ohio Op. 2d 147 (S.D. Ohio 1971).

15 Cal.—Lewis v. Linn, 209 Cal. App. 2d 394, 26 Cal. Rptr. 6 (1st Dist. 1962).

Fla.—Rivello v. Cooper City, 322 So. 2d 602 (Fla. 4th DCA 1975).

Arrests and imprisonments
The rule that a determination of the judge's jurisdiction is a judicial duty and good-faith error in such determination is within the rule of judicial immunity applies to arrests and imprisonments.

La.—Conques v. Hardy, 337 So. 2d 627 (La. Ct. App. 3d Cir. 1976).

16 U.S.—Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); Stiggle v. Tamburini, 467 F. Supp. 2d 183 (D.R.I. 2006).

Ind.—Cato v. Mayes, 270 Ind. 653, 388 N.E.2d 530 (1979).

N.J.—Zalewski v. Gallagher, 150 N.J. Super. 360, 375 A.2d 1195 (App. Div. 1977).

Acting under repealed statute
Even if plaintiff had been committed under a repealed statute providing for summary commitments, such judicial miscue did not remove the shield of judicial immunity.

U.S.—Robinson v. McCorkle, 462 F.2d 111 (3d Cir. 1972).

17 N.Y.—Segal v. Jackson, 183 Misc. 460, 48 N.Y.S.2d 877 (Sup 1944).

N.C.—Town of Fuquay Springs v. Rowland, 239 N.C. 299, 79 S.E.2d 774 (1954).

18 Md.—Fay v. Fay, 172 Md. 570, 193 A. 674 (1937).

Tex.—Morris v. McCall, 53 S.W.2d 667 (Tex. Civ. App. Beaumont 1932).

19 U.S.—Mireles v. Waco, 502 U.S. 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991); Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978); Hale v. Lefkow, 239 F. Supp. 2d 842 (C.D. Ill. 2003).

Fla.—Kalmanson v. Lockett, 848 So. 2d 374 (Fla. 5th DCA 2003).

Mayor acting as magistrate
Where a mayor was acting as a magistrate, plaintiff's appearance in the mayor's court to plead guilty to a criminal charge did not give the mayor any jurisdiction to determine plaintiff's property rights in relation to an automobile seized by the mayor, and when the mayor did so, he acted wholly outside his jurisdiction and was not protected by judicial immunity.

Iowa—Osbekoff v. Mallory, 188 N.W.2d 294, 64 A.L.R.3d 1242 (Iowa 1971).

20 Fla.—Farish v. Smoot, 58 So. 2d 534 (Fla. 1952).

21 U.S.—Miller v. County of Nassau, 467 F. Supp. 2d 308 (E.D. N.Y. 2006).

22 Fla.—Fuller v. Truncale, 50 So. 3d 25 (Fla. 1st DCA 2010).

23 N.J.—O'Regan v. Schermerhorn, 25 N.J. Misc. 1, 50 A.2d 10 (Sup. Ct. 1946).

24 N.J.—O'Regan v. Schermerhorn, 25 N.J. Misc. 1, 50 A.2d 10 (Sup. Ct. 1946).

Challenging constitutionality of statute
The doctrine of judicial immunity did not insulate a state county judge from proceedings challenging the constitutionality of a statute under which plaintiffs were being prosecuted in the county court.

U.S.—Cassidy v. Ceci, 320 F. Supp. 223 (E.D. Wis. 1970).

25 U.S.—Penn v. U.S., 335 F.3d 786 (8th Cir. 2003).

26 U.S.—Williams v. Sepe, 487 F.2d 913 (5th Cir. 1973); Orlando v. Wizel, 443 F. Supp. 744, 2 Fed. R. Evid. Serv. 886 (W.D. Ark. 1978).

27 U.S.—Apton v. Wilson, 506 F.2d 83 (D.C. Cir. 1974).

Wash.—Burgess v. Towne, 13 Wash. App. 954, 538 P.2d 559 (Div. 1 1975).

28 Alaska—Greywolf v. Carroll, 151 P.3d 1234 (Alaska 2007).

29 Vt.—Politi v. Tyler, 170 Vt. 428, 751 A.2d 788 (2000).

30 U.S.—Pulliam v. Allen, 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984); Bauer v. Texas, 341 F.3d 352 (5th Cir. 2003).

31 U.S.—Bolin v. Story, 225 F.3d 1234 (11th Cir. 2000).

32 U.S.—Kampfer v. Scullin, 989 F. Supp. 194 (N.D. N.Y. 1997).

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